



**TESTIMONY OF NTEU NATIONAL PRESIDENT  
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**ON**

**ENSURING HOMELAND SECURITY WHILE  
FACILITATING LEGITIMATE TRADE AND TRAVEL:  
THE CHALLENGE AT AMERICA'S PORTS OF ENTRY**

**BEFORE**

**THE HOMELAND SECURITY COMMITTEE  
U. S. HOUSE OF REPRESENTATIVES**

**Chamizal National Memorial Theater  
El Paso, Texas  
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Chairman Thompson and members of the House Homeland Security Committee, I would like to thank you for the opportunity to testify on the challenges of ensuring homeland security while facilitating legitimate trade and travel faced by the U.S. Customs and Border Protection Officers at America's ports of entry. As President of the National Treasury Employees Union (NTEU), I have the honor of leading a union that represents over 20,000 Customs and Border Protection (CBP) Officers, Agriculture Specialists, and trade compliance specialists who are stationed at 327 land, sea and air ports of entry across the United States, including the CBP Officers here at the El Paso port of entry.

Each year, 16 million cars, 8 million pedestrians and 700,000 commercial trucks cross El Paso's three international bridge crossings that operate 24 hours a day. The Paso del Norte Port of Entry has 9 lanes currently open with a reduction to 5 lanes planned when scheduled construction resumes after the holidays and 14 temporary pedestrian-only lanes. The Bridge of the Americas Port of Entry has 14 lanes and 4 pedestrian only lanes (of which only one or two are open regularly). The Ysleta (also known as the Zaragoza) Port of Entry has 12 lanes of which 2 are dedicated commuter lanes with 3 pedestrian only lanes (of which only one is regularly open). There are also three Dedicated Commuter Lanes at Stanton Street that are open 6 am to midnight during the week and 10 am to midnight on the weekend. Because of CBP Officer staffing shortages, not all vehicle and pedestrian lanes are open 24 hours a day.

In addition to Port of El Paso vehicle and pedestrian crossings, there are two commercial cargo truck specific crossings at the Bridge of the Americas Cargo Facility and the Ysleta Cargo Facility, as well as two single track railroad bridge crossings and three international airport facilities. All these facilities are staffed by CBP Officers, trade and agriculture specialists represented by NTEU.

I do not have to tell the people of El Paso that there are severe staffing shortages at our border crossings. They live with the long lines. For years, NTEU has been saying that CBP needs several thousand additional officers at its ports of entry; that insufficient staffing and scheduling abuses are contributing to morale problems, fatigue, and safety issues for CBP Officers; that CBP is losing officers faster than it can hire replacements and that these officers who risk their lives every day deserve law enforcement officer status. Now, GAO is saying it too. I know the people of El Paso join me in demanding that CBP management acknowledges these problems and takes action.

NTEU's testimony today will discuss CBP staffing, training and morale problems at the 327 U. S. Ports of Entry, which were confirmed in a November 5, 2007 GAO report (GAO-80-219). We will use examples from the El Paso Port of Entry to illustrate these problems and offer recommendations to address them.

### **ONE FACE AT THE BORDER INITIATIVE**

As part of the establishment of the Bureau of US. Customs and Border Protection in March 2003, the Department of Homeland Security (DHS) brought together employees

from three departments of government--Treasury, Justice and Agriculture to operate at the 327 ports of entry.

On September 2, 2003, CBP announced the One Face at the Border initiative. The initiative was designed to eliminate the pre-9/11 separation of immigration, customs, and agriculture functions at US land, sea and air ports of entry. **Inside CBP, three different inspector occupations -Customs Inspector, Immigration Inspector and Agriculture Inspector were combined into a single inspectional position-the CBP Officer.**

The priority mission of the CBP Officer is to prevent terrorists and terrorist weapons from entering the U.S., while simultaneously facilitating legitimate trade and travel-as well as upholding the laws and performing the traditional missions of the three legacy agencies, the U.S. Customs Service, the Immigration and Naturalization Service (INS) and the Animal, Plant and Health Inspection Service.

**In practice, the major reorganization of the roles and responsibilities of the inspectional workforce as a result of the One Face at the Border initiative has resulted in the dilution of the customs, immigration and agriculture inspection specializations and in weakening the quality of passenger and cargo inspections.**

According to CBP, "there will be no extra cost to taxpayers. CBP plans to manage this initiative within existing resources. The ability to combine these three inspectional disciplines and to cross-train frontline officers will allow CBP to more easily handle projected workload increases and stay within present budgeted levels." (See CBP's "One Face at the Border" Questions and Answers dated 9/15/03.)

This has not been the case. The knowledge and skills required to perform the expanded inspectional tasks under the One Face at the Border initiative have also increased the workload of the CBP Officer.

## **GAO REPORT**

In 2006, Congress requested that the Government Accountability Office (GAO) evaluate the One Face at the Border initiative and its impact on legacy customs, immigration and agricultural inspection and workload. GAO conducted its audit from August 2006 through September 2007 and issued its public report, Border Security: Despite Progress, Weaknesses in Traveler Inspections Exist at Our Nation's Ports of Entry (GAO-08-219), on November 5, 2007. The conclusions of this report echo what NTEU has been saying for years:

- CBP needs several thousand additional CBP Officers and Agriculture Specialists at its ports of entry.
- Not having sufficient staff contributes to morale problems, fatigue, and safety issues for CBP Officers.
- Staffing challenges force ports to choose between port operations and providing training.

- CBP's onboard staffing level is below budgeted levels, partly due to high attrition, with ports of entry losing officers faster than they can hire replacements.
- One of the major reasons for high attrition is that CBP Officers are leaving to take positions in other federal agencies to obtain law enforcement officer benefits not provided to them at CBP.

### **Land Ports of Entry:**

Most travelers enter the U.S. through the nation's 166 land border ports of entry. About two-thirds of travelers are foreign nationals and about one-third are returning U.S. citizens. The vast majority arrive by vehicle. The purpose of the primary inspection process is to determine if the person is a U.S. citizen or alien, and if alien, whether the alien is entitled to enter the U.S. In general, CBP Officers are to question travelers about their nationality and purpose of their visit, whether they have anything to declare, and review any travel documents the traveler may be required to present.

**At the land ports, primary inspections are expected to be conducted in less than one minute. Travelers routinely spend about 45 seconds at El Paso crossings during which CBP Officers have to assess documents and oral claims of citizenship.**

Currently, there are thousands of documents that travelers present to CBP Officers when attempting to enter the United States, creating a tremendous potential for fraud. In addition, it takes several minutes for CBP Officers to perform shift changes at the land ports of entry. The delay is primarily due to restarting the inspection booth computer with a new operator. This situation is exacerbated by random computer generated operations and enforcement referrals to secondary inspection areas. Rebooting the computer by the new CBP Officer takes on average three to five minutes. Lines back up during shift changes and CBP Officers are under pressure by managers to clear these lanes quickly.

### **Air Ports of Entry:**

At the airports, CBP Officers are expected to clear international passengers within 45 minutes. Prior to 9/11, there was a law on the books requiring INS to process incoming international passengers within 45 minutes. The Enhanced Border Security and Visa Protection Act of 2002 repealed the 45 minute standard, however, it added a provision specifying that staffing levels estimated by CBP in workforce models be based upon the goal of providing immigration services within 45 minutes. According to GAO, "the number of CBP staff available to perform primary inspections is also a primary factor that affects wait times at airports." (See GAO-05-663, page 12.)

In addition, **the U.S. Travel and Tourism industry has called for a further reduction in passenger clearance time to 30 minutes.** The industry's recently

announced plan, called "A Blueprint to Discover America," includes a provision for "modernizing and securing U.S. ports of entry by hiring customs and border [protection] officers at the top 12 entry ports to process inbound visitors through customs within 30 minutes." This **CANNOT** be achieved at current staffing levels without jeopardizing security.

The emphasis on passenger processing and reducing wait times results in limited staff available at secondary to perform those inspections referred to them. NTEU has noted the diminution of secondary inspection in favor of passenger facilitation at primary inspection since the creation of the Department of Homeland Security.

### **IMPACT OF STAFFING SHORTAGES**

According to GAO, "At seven of the eight major ports we visited, officers and managers told us that not having sufficient staff contributes to morale problems, fatigue, lack of backup support and safety issues when officers inspect travelers--increasing the potential that terrorists, inadmissible travelers and illicit goods could enter the country." (See GAO-08-2 19, page 7.)

"Due to staffing shortages, ports of entry rely on overtime to accomplish their inspection responsibilities. Double shifts can result in officer fatigue...officer fatigue caused by excessive overtime negatively affected inspections at ports of entry. On occasion, officers said they are called upon to work 16-hour shifts, spending long stints in primary passenger processing lanes in order to keep lanes open, in part to minimize traveler wait times. Further evidence of fatigue came from officers who said that CBP officers call in sick due to exhaustion, in part to avoid mandatory overtime, which in turn exacerbates the staffing challenges faced by the ports." (See GAO-08-219, page 33.)

Staffing shortages have also diminished the quality of secondary inspections. In the past, there were two or more inspectors in secondary processing for every one inspector in primary processing. Now there is a one to one ratio. Before the merger, an inspector would check documents, query the traveler and send to secondary any vehicles or persons that needed additional vetting by an inspector. At secondary, a thorough document check or vehicle search would take place. Without adequate personnel at secondary, wait times increase and searches are not done to specifications.

### **ADDRESSING STAFFING SHORTAGES**

The President's FY 2008 budget proposal requests \$647.8 million to fund the hiring of 3000 Border Patrol agents. But, for salaries and expenses for Border Security, Inspection and Trade Facilitation at the 327 ports of entry, the President's funding request is woefully inadequate. NTEU is grateful that Congress did include funding for an additional 450 CBP Officers in the FY 2007 DHS Appropriations bill, but it is clearly not enough.

In order to assess CBP Officer staffing needs, Congress, in its FY 07 DHS appropriations conference report, directed CBP to submit by January 23, 2007 a resource allocation model for current and future year staffing requirements.

In July 2007, CBP provided GAO with the results of the staffing model. "The model's results showed that CBP would need up to several thousand additional CBP officers and agricultural specialists at its ports of entry." (See GAO-08-219, page 31.)

I am not privy to the actual number of CBP Officers on staff today or the optimal staffing number as stated in CBP's own Staffing Allocation Model for the Port of El Paso because CBP has deemed this information to be "law enforcement sensitive." I do know that the difference in actual staffing and optimal staffing is likely in the hundreds.

**In July 2007, NTEU called on Congress to hire an additional 4,000 CBP Officers.** NTEU based this number on results from the former U.S. Customs Service's last internal review of staffing for Fiscal Years 2000-2002 dated February 25, 2000, also known as the 2000-2002 RAM, that shows that the Customs Service needed over 14,776 Customs inspectors just to fulfill its basic mission-and that was before September 11. Since then the Department of Homeland Security was created and the U.S. Customs Service was merged with the Immigration and Naturalization Service and parts of the Animal, Plant and Health Inspection Service to create Customs and Border Protection and given an expanded mission of providing the first line of defense against terrorism, in addition to making sure trade laws are enforced and trade revenue collected.

According to GAO, with the merger of the three agencies' inspection forces, there are now approximately 18,000 CBP Officers currently employed by CBP. **NTEU believes that at least 22,000 CBP Officers would be needed to have a robust and fully staffed force at our ports of entry.** NTEU called for this increase in response to Congressional inquiries in July. **NTEU further estimates that of these 4000 additional CBP Officer new hires, 300 to 400 should be assigned to El Paso in order to provide critical passenger and cargo inspections. I urge the Committee to review CBP's Staffing Allocation Model for the optimal staffing numbers for all 327 ports of entry and to authorize the funding necessary for CBP to achieve this level of staffing.**

There exists a large number of CBP Officer vacancies in El Paso and throughout the U.S. And the ratio of supervisors to staff has increased dramatically at El Paso. In the 1990s, the goal was one supervisor to every 15 inspectors. Today at El Paso, there is one supervisor for every seven CBP Officers. This ratio puts increasing scheduling pressure on frontline CBP officers.

NTEU believes that if the El Paso Port of Entry was staffed at the number stated in CBP's own Staffing Allocation Model, all pedestrian and vehicle lanes at all port crossings could be opened to capacity, while managing contingencies, as well as allowing CBP Officers' time for mandated training.

## **Agriculture Specialists:**

NTEU was certified as the labor union representative of CBP Agriculture Specialists in May of this year as the result of an election to represent all CBP employees, other than Border Patrol agents, that had been consolidated into one bargaining unit by merging the port of entry inspection functions of Customs, INS and the Animal, Plant and Health Inspection Service as part of DHS' One Face at the Border initiative.

According to GAO (GAO-08-219, page 31), CBP's staffing model "showed that CBP would need up to several thousand additional CBP Officers and agriculture specialists at its ports of entry." **And GAO testimony issued on October 3, 2007 stated that, "as of mid-August 2007, CBP had 2,116 agriculture specialists on staff, compared with 3,154 specialists needed, according to staffing model."** (See GAO-08-96T page 1.) NTEU recommends that CBP hire additional CBP Agriculture Specialists to comply with its own staffing model.

In addition, NTEU recommends that CBP Agriculture Specialists have access to voluntary overtime opportunities to the same extent as CBP Officers. Agriculture Specialists did not have an overtime cap before joining CBP. Many now say they are not given adequate voluntary overtime opportunities.

NTEU also recommends that Congress, through oversight and statutory language, make clear that the agricultural inspection mission is a priority and require DHS to report to them on how it is following U.S. Department of Agriculture procedures on agriculture inspections. The report should include wait times for clearing agricultural products and what measures could be implemented to shorten those wait times.

## **TRAINING ISSUES**

The Homeland Security Appropriations Committee added report language to the FY 2007 DHS Appropriations bill that, with regard to CBP's One Face at the Border initiative, directs "CBP to ensure that all personnel assigned to primary and secondary inspection duties at ports of entry have received adequate training in all relevant inspection functions." It is my understanding that CBP has not reported to DHS Appropriators pursuant to this language, but NTEU's CBP members have told us that CBP Officer cross-training and on-the-job training is woefully inadequate. In addition, staffing shortages force managers to choose between performing port operations and providing training. In these instances, it is training that is sacrificed.

GAO reports extensively in GAO-08-219, pages 35-41, on the shortcomings with CBP's on-the-job and cross training programs and I urge you to review this information.

I also urge you to review NTEU testimony on CBP training issues that I

delivered before the House Homeland Security Subcommittee on Management, Integration and Oversight on June 19, 2007. In El Paso, according to NTEU members, there are no meaningful training programs-CBP Officers are regularly told to complete two-hour training courses in 30 minutes.

### **INFRASTRUCTURE ISSUES**

NTEU does not dispute that the problems of El Paso's port facilities' infrastructure need to be addressed. There are currently three pedestrian/passenger vehicle processing facilities open 24 hours a day, seven days a week. A major construction project to expand the number of vehicle lanes from 9 to 11 at the Paso del Norte crossing is currently under way. I understand the 9 lanes now open will be reduced to 5 after the holiday season when construction resumes. I also understand that the 14 temporary pedestrian lanes there are seriously congested, but this situation will improve after completion of the construction project. In addition, the Ysleta cargo facility is undergoing renovation. There are no lanes currently closed, but at some point commercial traffic lanes will be closed.

All port infrastructure solutions, including constructing an additional 24 hour port facility, will take years to achieve. What is necessary today is to staff all existing lanes to capacity. Currently, the Port of El Paso does not have adequate staffing to achieve this, which has resulted in abusive scheduling practices, as well as increased wait times. Scheduling and overtime abuses and their effect on recruitment and retention of CBP Officers are discussed below.

### **RECRUITMENT AND RETENTION ISSUES**

Reported staffing shortages are exacerbated by challenges in retaining staff, contributing to an increasing number of vacant positions nationwide. "CBP's onboard staffing level is below its budgeted level.. the gap between the budgeted staffing level and the number of officers onboard is attributable in part to high attrition, with ports of entry losing officers faster than they can hire replacements. Through March 2007, CBP data shows that, on average, 52 CBP Officers left the agency each 2-week pay period in fiscal 2007, up from 34 officers in fiscal year 2005...Numerous reasons exist for officer attrition." (See GAO-08-2 19, page 34.)

#### **Work Shift Schedule Abuse:**

A major factor that has hindered the recruitment and retention of CBP Officers is work shift determinations. In the past, the agency had the ability to determine what the shift hours will be at a particular port of entry, the number of people on the shift, and the job qualifications of the personnel on that shift. The union representing the employees had the ability to negotiate with the agency, once the shift specifications were determined, as to which eligible employees would work which shift. This was determined by such criteria as seniority, expertise, volunteers, or a number of other factors.

CBP Officers around the country have overwhelmingly supported this method for determining their work schedules for a number of reasons. One, it provides employees with a transparent and credible system for determining how they will be chosen for a shift. They may not like management's decision that they have to work the midnight shift but the process is credible and both sides can agree to its implementation. Two, it takes into consideration lifestyle issues of individual officers, such as single parents with day care needs, employees taking care of sick family members or officers who prefer to work night shifts. **CBP's unilateral elimination of employee input into this type of routine workplace decision-making has had probably the most negative impact on employee morale.**

On November 13, 2007, NTEU won an arbitration decision that found that CBP had not been abiding by existing federal laws that require employees to receive one week notice of their work shifts; be scheduled so they receive two consecutive days off; and have schedules that provide for uniform daily work hours for each day of the week.

In El Paso, CBP Officers have been scheduled for what are called "free doubles" -- back to back shifts -- 16 hours -- that straddle two pay periods with the intent to avoid overtime pay for the second 8 hour shift. El Paso port managers also frequently schedule CBP Officers to varying shifts within the same pay period, for example, 8 am to 4 pm one day, then 4 pm to midnight the next day and then midnight to 8 am the following day. These schedules have been altered daily, with no notice, making it impossible for CBP Officers to have any certainty in planning personal or family activities during off-duty hours.

In order to avoid a pay differential that is required for commuting time when an officer is called back to work (call back and commute), port managers order officers on the premises to overtime duty. CBP Officers have been held over in a booth rather than bringing in a fresh officer to avoid paying a commute. CBP managers frequently staff primary lanes with supervisors and have required canine officers to drop leash for assignment in primary booths. Scheduling abuses along with short-staffing, have resulted in overworked officers, safety and overtime violations, and concerns about favoritism in assignment of work and overtime.

In addition, to scheduling abuses, El Paso CBP managers have instituted leave policies that are not sanctioned by law or contract. Managers request that CBP Officers provide, at the officer's expense, medical documentation for one day of sick leave and have required minimum leave balances where none exist in either the CBP Leave Handbook or the contract.

These abuses have resulted in CBP Officers leaving the service in droves. NTEU hopes that this arbitration win and returning some normalcy back to CBP Officer schedules will reduce this trend. Unfortunately, it is likely that CBP will appeal the arbitrator's ruling, further delaying resolution of this ongoing problem at all 327 ports of entry.

### **Law Enforcement Officer Status:**

CBP Officers clearly deserve Law Enforcement Officer (LEO) status and Congress in the recently passed FY 2008 omnibus spending bill recognized this by providing a prospective LEO retirement benefit to CBP Officers beginning in July 2008. NTEU is grateful to the Homeland Security Committee for its leadership in achieving the enactment of this provision for CBP Officers.

For years, the most significant impediment to recruitment and retention of CBP Officers has been the lack of LEO status. LEO recognition is of vital importance to CBP Officers. CBP Officers perform work every day that is as demanding and dangerous as any member of the federal law enforcement community, yet they have long been denied LEO status.

The GAO report confirms the negative impact that lack of LEO coverage is having. "CBP officers are leaving the agency to take positions at other DHS components and other federal agencies to obtain law enforcement officer benefits not authorized to them at CBP. In fiscal year 2006, about 24 percent of the officers leaving CBP, or about 339, left for a position in another DHS component." (See GAO-08-219, page 34.)

All too often, talented young officers treated the CBP Officer position as a stepping-stone to other law enforcement agencies with more generous retirement benefits. With the enactment of Section 535 of the FY 2008 omnibus spending bill, this will no longer be the case. Legislation has also been introduced in the House and Senate, H.R. 1073 and S. 1354 respectively, the Law Enforcement Officer Retirement Equity Act, that would provide retroactive LEO benefits to CBP Officers and NTEU continues to support this effort.

### **DHS Human Resources System:**

In July 2005, the U.S. District Court for the District of Columbia ruled that portions of the proposed DHS personnel regulations, formerly known as MaxHR, but now called the Human Capital Operations Plan (HCOP), infringed on employees' collective bargaining rights, failed to provide an independent third-party review of labor-management disputes and lacked a fair process to resolve appeals of adverse management actions. The Appellate Court rejected DHS' appeal of this District Court decision and DHS declined to appeal the ruling to the Supreme Court.

When Congress passed the Homeland Security Act in 2002, it granted the new department very broad discretion to create new personnel rules. It basically said that DHS could come up with new systems as long as employees were treated fairly and continued to be able to organize and bargain collectively. The regulations DHS came up with were subsequently found by the Courts to not even comply with these two very minimal and basic requirements.

It has become clear to the Congress that DHS has learned little from these

Court losses and repeated survey results and will continue to overreach in its attempts to implement the personnel provisions included in the Homeland Security Act of 2002. In May, the full House approved H.R. 1648, the FY 2008 DHS Authorization bill that includes a provision that repeals the DHS Human Resources Management System. In addition, both of the 2008 DHS Appropriations bills significantly restrict funding for MaxHR, now called HCOP.

DHS employees deserve more resources, training and technology to perform their jobs better and more efficiently. DHS employees also deserve personnel policies that are fair. The DHS personnel system has failed utterly and its authorization should be repealed and all funding should be eliminated by Congress.

### **Job Satisfaction, Leadership and Workplace Performance Survey:**

In February of this year, DHS received the lowest scores of any federal agency on a survey for job satisfaction, leadership and workplace performance. Of the 36 agencies surveyed, DHS ranked 36th on job satisfaction, 35th on leadership and knowledge management, 36th on results-oriented performance culture, and 33rd on talent management. As I have stated previously **widespread dissatisfaction with DHS management and leadership creates a morale problem that affects recruitment and retention and the ability of the agency to accomplish its mission.**

### **NTEU RECOMMENDATIONS**

CBP employees represented by NTEU are capable and committed to the varied missions of DHS from border control to the facilitation of trade into and out of the United States. They are proud of their part in keeping our country free from terrorism, our neighborhoods safe from drugs and our economy safe from illegal trade. The American public expects its borders and ports be properly defended. Congress must show the public that it is serious about protecting the homeland by:

- Filling vacancies and increasing CBP Officer and CBP Agriculture Specialist staffing to those levels in CBP's own staffing model;
- reestablishing specialization of prior inspectional functions;
- ensuring the successful extension of LEO retirement coverage to CBP Officers;
- repealing the compromised DHS personnel system; and
- allowing employee input in the shift assignment system.

Again, I would like to thank the committee for the opportunity to be here today on behalf of the 150,000 employees represented by NTEU and especially the members of NTEU Chapter 143, CBP El Paso.